No. 13119

In the United States Court of Appeals for the Ninth Circuit

PEOPLE OF THE STATE OF CALIFORNIA AND MAURICE C. SPARLING, AS SUPERINTENDENT OF BANKS OF THE STATE OF CALIFORNIA, APPELLANTS,

v.

COAST FEDERAL SAVINGS AND LOAN ASSOCIATION, APPELLEE.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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STATEMENT OF THE CASE

In this action, which was originally filed in the Superior Court of the State of California in and for the County of Los Angeles and was removed by the appellee to the United States District Court for the Southern District of California, Central Division, the appellants seek to enjoin the appellee from violating certain provisions of the Banking Code of California, and to recover from the appellee statutory penalties of $100.00 a day for each alleged violation of the California law.

The facts are adequately set forth in the opinion of the District Court (R. 106–110), and in the Stipu-

lation of Facts for the Purposes of Trial (R. 93–104). In essence, they are these:

The appellee, whose principal place of business is in the County of Los Angeles, State of California, is a Federal Savings and Loan Association chartered by the Home Loan Bank Board, an agency of the United States, pursuant to the Home Owners' Loan Act of 1933, 12 U. S. C. 1464 (R. 94, 107). Under the terms of that Act, it is "subject to the jurisdiction, regulation and control" of the Home Loan Bank Board (R. 94).

The appellants concede that the fiscal operations of the appellee are, in fact, those of a savings and loan association and not those of a "bank" or "savings bank." (R. 143–144, 151). The appellants complain, however, that the appellee uses the word "bank" and "savings" and otherwise advertises so as to create the impression that the appellee is engaged in a banking business, as that term is defined in the Banking Code of the State of California (R. 12–21, 94–100, 108–109). Since the appellee has not received a certificate from the State Superintendent of Banks of California to engage in a banking business in California, and has not been authorized by the United States to transact business as a national bank (R. 94, 107), the appellants contend that the appellee has violated the Banking Code of the State of California (R. 108).[1]

[1] Sections 102, 3390, 3391, 3393, and 3395 of the Banking Code of the State of California, which are set forth in the opinion below (R. 120–121), prohibit any person lacking a certificate from the State Superintendent of Banks from transacting business in the

The ultimate question thus presented for determination by this Court is whether the sanctions of the Banking Code of the State of California, which regulates the advertising activities of persons not licensed to engage in a commercial or savings bank business, may validly be invoked against a Federal Savings and Loan Association.

STATUTE AND REGULATIONS INVOLVED

The Home Owners' Loan Act of 1933 (Act of June 13, 1933, 48 Stat. 128, as amended, 12 U. S. C. 1461 *et seq.*), and the regulations issued by the Home Loan Bank Board (24 CFR 1949 ed., Ch. 1, Sub. Ch. C and D) are contained in two separate pamphlets which are submitted with this brief. The pertinent provisions of the California Banking Code are set forth in the appellants' brief at pp. 9–12.

Interest of the United States

This suit involves the attempted application of State law and regulation to a Federal Savings and Loan Association, a mutual association chartered by an agency of the United States, the Home Loan Bank Board,[2] pursuant to Section 5 of the Home Owners' Loan Act of 1933 (12 U. S. C. 1464). It is our position that Congress, in that Act, vested plenary authority in the Home Loan Bank Board over the entire field of

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manner of a commercial or savings bank and from doing any advertising that may lead the public to believe that its business is that of a commercial or savings bank.

[2] The Board, an independent agency in the executive branch of the Government, was created by Section 17 of the Federal Home Loan Bank Act of July 22, 1932, 47 Stat. 725, 736, 12 U. S. C. 1437.

supervision and regulation of Federal Savings and Loan Associations to the exclusion of State law and authority.

Different regulations and varying restrictions are applied to local mutual thrift and home-financing institutions in the several States. The requirements of one State may be directly contrary to those of another State or to those which the Home Loan Bank Board deems desirable, thus subjecting Federal Savings and Loan Associations to a possible cross-fire of conflicting requirements. Some States tend to encourage, others to discourage, the mutual or cooperative type of financial institutions. This policy may be reflected in statutes and regulations affecting all operations, in day to day rulings of state supervisors, and even in the state judiciary. Compliance by Federal Savings and Loan Associations in any State with the requirements of the State authorities would make national supervision a practical impossibility. Even the imposition of penalties by the State for violation of Federal regulations would seriously hamper uniformity of operations of the Federal system. Such uniformity cannot be achieved if more than one authority has the power to determine whether there has been a violation. Nor can uniformity be obtained even in the case of an admitted violation if penalties, which should be imposed on a policy judgment basis, are imposed by more than one authority.

Accordingly, the United States is critically interested in the question whether Federal Savings and Loan Associations are to continue to be supervised exclusively by the Home Loan Bank Board. The reso-

lution of this question, we believe, has an important bearing on the financial operations of such associations and on the effectuation of the objectives of the Home Owners' Loan Act.[3]

SUMMARY OF ARGUMENT

A. The Home Owners' Loan Act, which authorizes the incorporation of Federal Savings and Loan Associations, is a valid exercise of the fiscal power of Congress and of the power of Congress to provide funds for the general welfare. Accordingly, Congress possesses the constitutional power to occupy the field of regulation and supervision of the operations of these associations and to exclude State law and regulation. It is well settled that State laws cannot be applied in coincidence with, as complementary to, or as in opposition to, Federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction.

B. By virtue of the broad delegation of authority to the Home Loan Bank Board "to provide for the organization, incorporation, examination, operation and regulation" of Federal Savings and Loan Associations under "such rules and regulations as it may prescribe," Congress vested plenary power in the Board over the whole field of supervision and regulation of the operations of these associations. State law and regulation is, therefore, excluded because of the intention of Congress to create a national system of

[3] It may well be that the California Banking Code does not, and was not intended to, apply to Federal Savings and Loan Associations. We do not argue that point; presumably it will be discussed by the appellee.

uniformly operated savings institutions supervised and controlled by a single central authority under a uniform central law.

C. The sanctions of the California Banking Code not only conflict with the national policy of uniformity of regulation and supervision of Federal Savings and Loan Associations but conflict directly with the terms of the Act and the regulations promulgated thereunder by the Home Loan Bank Board. The Act and regulations expressly authorize these associations to solicit "savings accounts." It follows, therefore, that California may not penalize an association for doing what the paramount Federal law authorizes it to do.

ARGUMENT

The Home Owners' Loan Act of 1933 vests in the Home Loan Bank Board plenary and exclusive authority over the entire field of supervision and regulation of Federal Savings and Loan Associations and excludes State supervision and regulation

A. State laws cannot validly be applied in coincidence with, as complementary to, or as in opposition to, Federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction

Appellants' primary attack on the decision below is that the district court erred in holding that the appellee is a Federal instrumentality and, therefore, immune *per se* from State regulation. Appellants misconceive the import of the court's decision and the position taken by the United States as *amicus curiae*. The express holding of the court below is that "Congress has preempted the field, making invalid the State statutes plaintiffs rely upon when attempted

to be invoked against a Federal savings and loan association" (R. 116–117).

Although we believe that Federal Savings and Loan Associations are instrumentalities of the United States,[4] we do not contend that they are for that reason alone immune *per se* from the application of the sanctions of the California Banking Code which appellants here seek to enforce. Admittedly, all instrumentalities of the United States are not clothed with the inherent sovereign immunity of the Government merely because they are Federal instrumentalities. It is equally clear, however, that Congress "has the power to protect the instrumentalities which it has constitutionally created" and may exclude state regulation or taxation. *Federal Land Bank* v. *Bismarck Lumber Co.,* 314 U. S. 95, 102; cf. *Carson* v. *Roane-Anderson Co.,* 20 U. S. Law Week 4080. The question of immunity *vel non* of Federal instrumentalities depends on the intention of Congress. Where

[4] Such associations function not only as local mutual thrift institutions but in addition, serve as fiscal agents of the Government (12 U. S. C. 1464 (k)), as a means through which the Government exercises its borrowing power (12 U. S. C. 1464 (c)), and as a means through which the Government exercises its power to control the credit structure of the nation and provides funds for the general welfare (12 U. S. C. 1464 (g) and (h); 12 U. S. C. 1465). Because Federal Savings and Loan Associations perform such Federal governmental functions, they have been held to be instrumentalities of the United States. *Federal Sav. and Loan Ins. Corp.* v. *Kearney Trust Co.*, 151 F. 2d 720 (C. A. 8); *First Federal Sav. & Loan Ass'n* v. *Loomis*, 97 F. 2d 831 (C. A. 7), certiorari dismissed, 305 U. S. 666; *First Federal Sav. & Loan Ass'n* v. *Danaher*, 128 Conn. 78, 20 A. 2d 455; *State* v. *Minnesota Federal Sav. & Loan Ass'n*, 218 Minn. 229, 15 N. W. 2d 568; cf. *Keifer & Keifer* v. *Reconstruction Finance Corp.*, 306 U. S. 381, 392.

Congress has not expressed its purpose in so many words, "the silence of Congress as to the subjection of its instrumentalities, other than the United States [itself], to local taxation or regulation is to be interpreted in the setting of the applicable legislation and the particular exaction." *Mayo* v. *United States,* 319 U. S. 447–448. Accordingly, if it be assumed that Federal Savings and Loan Associations are Federal instrumentalities, our inquiry here is to ascertain that legislative intention.

In the circumstances of this case, however, we think it irrelevant whether such asociations are Federal instrumentalities. Whether or not they be deemed Federal instrumentalities, it is clear that the provisions of Section 5 of the Home Owners' Loan Act, *supra,* which authorize the incorporation of Federal Savings and Loan Associations are a valid exercise of the fiscal power of Congress and of the power of Congress to provide funds for the general welfare. Cf. *Fahey* v. *Mallonee,* 332 U. S. 245; *First Federal Sav. & Loan Ass'n* v. *Loomis,* 97 F. 2d 831 (C. A. 7), certiorari dismissed, 305 U. S. 666. Accordingly, Congress possesses the constitutional power to occupy the field and to exclude State regulation of the operations and activities of those associations, and appellants so concede.

The question presented for resolution to this Court does not turn, therefore, on whether Federal Savings and Loan Associations are Federal instrumentalities but on whether Congress intended to preempt the field of regulation and supervision of such associations to the exclusion of State law.

Appellants contend that Congress has not preempted the field of regulation here in dispute because neither the Home Owners' Loan Act nor the regulations of the Home Loan Bank Board allegedly permit a Federal Savings and Loan Association to hold itself out to the public as a "bank" in contravention of State law. Thus, appellants assert that the State statutes here involved are valid because their terms do not conflict with the terms of Federal law and regulation.

Although, as we shall show (*infra*, pp. 19–24), there is such conflict, conflict in terms between State and Federal law is but one particularization of the fundamental inquiry: Does State action conflict with national policy? Cf. *California* v. *Zook*, 336 U. S. 725, 729. The factor of conflict in the terms of State and Federal statutes, or the lack of it, as a basis for determining the validity of State law is relevant only in situations where Congress has chosen to circumscribe its regulation and occupy only a limited field and the State regulation is outside that limited field. "When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition." *Charleston & Western Car. R. R. Co.* v. *Varnville Co.*, 237 U. S. 597, 604. As the Supreme Court emphasized in *Missouri Pacific Railroad Co.* v. *Porter*, 273 U. S. 341, 346, State laws "cannot be applied in coincidence with, as complementary to, or as in opposition to, Federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction." See also *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 169;

Southern Ry Co. v. *Railroad Comm. of Indiana,* 236 U. S. 439, 446, 448; *Erie R. Co.* v. *New York,* 233 U. S. 671, 683; *Second Employers' Liability Cases,* 223 U. S. 1, 55. As we show, *infra,* pp. 10–19, the State law here sought to be invoked not only conflicts in terms but, what is more important, plainly conflicts with national policy.

B. The intention of Congress to create a national system of uniformly operated and regulated Federal Savings and Loan Associations precludes the application of State law and regulation which would impinge upon and destroy that uniformity

Federal Savings and Loan Associations are chartered pursuant to Section 5 of the Home Owners' Loan Act by the Home Loan Bank Board, which is directed to give "primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States." (12 U. S. C. 1464 (a).) Subject to this general policy direction and to certain statutory limitations upon the operations of the associations,[5] the Board is vested with plenary, preemptive power "under such rules and regulations as it may prescribe, to provide for the organization, incorporation, examination, operation and regulation" of the associations (12 U. S. C. 1464 (a)).[6] The

[5] *E. g.*, associations are prohibited to receive creditor deposits (12 U. S. C. 1464 (b)), specific limitations are placed upon the lending operations of associations (12 U. S. C. 1464 (c)), and charters can be granted only where a necessity exists in the particular community to be served for such an association (12 U. S. C. 1464 (e)).

[6] Appellants do not challenge the constitutionality of this delegation of authority, and no sound basis for any such challenge exists. *Fahey* v. *Mallonee*, 332 U. S. 245; *First Federal Sav. & Loan Ass'n.* v. *Loomis*, *supra;* see *Smith* v. *Kansas City Title & Trust Co.*, 255 U. S. 180.

Board is further empowered to provide in its rules and regulations for the "reorganization, consolidation, merger and liquidation of such associations, * * * to appoint a conservator or a receiver to take charge of the affairs of any such association, and to require an equitable readjustment of the capital structure of the same; and to release any such association from such control and permit its further operation." (12 U. S. C. 1464 (d).) Pursuant to this statutory authorization, the Board has promulgated detailed and comprehensive rules and regulations covering all phases of the operations of all Federal Savings and Loan Associations from their inception to their dissolution. See 24 CFR 1949 ed., Ch. 1, Sub. Ch. C and D.

Thus, as the court below pointed out (R. 117–118), unlike national banks as to whose operations Congress has expressly left open a field for State regulation and the application of State law, Congress has here conferred plenary and exclusive authority upon a single central agency, and that authority has been exercised. No provision was made in the Act for sharing the Board's preemptive authority with State regulatory or supervisory agencies. *North Arlington Nat. Bank* v. *Kearney Federal Sav. & Loan Ass'n.,* 187 F. 2d 564 (C. A. 3); *First Federal Sav. & Loan Ass'n.* v. *Loomis,* 97 F. 2d 831 (C. A. 7), certiorari dismissed, 305 U. S. 666.

It is apparent, therefore, that a national system of uniformly operated savings institutions was intended by Congress. As stated by the Board in one of its Annual Reports to Congress: "In providing for the establishment of Federal savings and loan

associations in 1933, Congress contemplated that these institutions would serve two purposes: (1) to provide sound thrift and home financing facilities in communities previously lacking adequate savings and home mortgage lending resources, and (2) to develop under Federal charter a group of home financing institutions operating under the best standards and practices evolved in the long history of savings and loan associations." Ninth Annual Report of the Federal Home Loan Bank Board for the period July 1, 1940, through June 30, 1941, page 103.[7]

By virtue of the broad delegation of authority to the Home Loan Bank Board "to provide for the organization, incorporation, examination, operation and regulation" of Federal Savings and Loan Associations under "such rules and regulations as it may prescribe," Congress announced its intention that every phase of the operations of such associations from their inception to their dissolution be supervised and controlled by a single central authority under a uniform central law. And in directing the Board to give "primary consideration to the best practices of local mutual thrift and home-financing institutions in the United States," Congress emphasized this declaration of national policy. Federal Savings and Loan Associations were not to be operated and regulated by what a particular State conceived, as expressed in its legislation, to be the "best practices." On the contrary, the Board was to select from the prevailing practices in all the States what

[7] See also Report of the Home Loan Bank Board for the year ending December 31, 1949, p. 20.

it deemed to be the "best practices" and to prescribe, under its rules and regulations, a uniform system of operation, supervision, and regulation which would apply to all such associations in all the States.

Significantly, where Congress intended the associations to be subject to State law, Congress specifically spelled out the extent to which State law is applicable. Section 5 (h) of the Act provides that "no State, Territorial, county, municipal, or local taxing authority shall impose any tax on such associations or their franchise, capital, reserves, surplus, loans, or income greater than that imposed by such authority on other similar local mutual or cooperative thrift and home-financing institutions." (12 U. S. C. 1464 (h).) And Section 5 (i) makes provision, subject to such rules and regulations as the Board may prescribe, for the limited application of State law to the conversion of Federal Savings and Loan Associations into State-chartered institutions and to the conversion of State-chartered institutions into Federal Savings and Loan Associations (12 U. S. C. 1464 (i)).

This enumeration of the limited applicability of State law is particularly revealing when viewed in the light of the legislative history of Section 5 (i). As originally enacted, Section 5 (i) permitted a State-chartered association to convert to a Federal association by vote of its members "as provided by the law under which it operates." (48 Stat. 134.) In 1934, Congress eliminated the requirement for compliance with State law (48 Stat. 646). Since the power of Congress with respect to State-chartered

associations was concurrent rather than exclusive, the Supreme Court struck down the 1934 language of Section 5 (i) as an impingement upon the reserved powers of the States under the Tenth Amendment. *Hopkins Federal Sav. & Loan Ass'n.* v. *Cleary,* 296 U. S. 315. In thus invalidating Section 5 (i), however, the Court made the following illuminating observation, pointing out that Congress had "erected a standard of its own, which was to be uniform in all the States irrespective of the local laws * * * that Congress had in mind to take possession of the field to the exclusion of other occupants." *Id.* at 333. This one aspect of the legislative history of the Home Owners' Loan Act, in itself, compels the conclusion that Congress intended, insofar as constitutional limitations permit, to establish a uniform system of operation, regulation and supervision of Federal Savings and Loan Associations.

The reason for this Congressional policy is apparent. At the time of the passage of the Act, the two best known types of local mutual thrift and home-financing institutions, were building and loan associations and mutual savings banks. The institutions generally categorized as building and loan associations operated under different names in different parts of the country, being known as cooperative banks, homestead associations, savings and loan associations, and other such names. The other type of mutual savings institution, the mutual savings bank, conformed to the original pattern of a savings institution operated by a disinterested self-perpetuating board of trustees for the benefit of persons assumed to be incapable of par-

ticipating in its management but who receive the financial benefits of its mutuality. Undoubtedly, the operating structures of these local institutions varied as widely as their names; they were subject to variant requirements and controls derived from preconceptions prevalent in the particular area at the time of the enactment of the applicable State laws. In some of the States, unsafe and unsound practices had developed under haphazard regulations and supervision.[8] And under existing State laws, thrift and home-financing facilities had not been made available to numerous communities throughout the United States. 77 Cong. Rec. 4977.

State laws were, and are, varied and conflicting. For example, California undertakes in this litigation to prevent Federal Savings and Loan Associations from conveying to the public the impression that they are "banking institutions." In New York, however, all savings and loan associations are specifically declared to be "banking organizations." New York Banking Law, § 2 (11) (McKinney's Laws of New York, vol. 4, Part 1, § 2 (11)). And, in Massachusetts, such institutions are generally designated as "banks." Ann. Laws Mass., Vol. 5A, ch. 170. But Federal Savings and Loan Associations in New York, Massachusetts and California are the same, regardless of whether the particular State calls analogous institutions "banking institutions."

Similarly, California here attempts to prohibit Fed-

[8] Even at the present time one of the States, Maryland, has no provision for supervising and regulating its savings and loan associations.

eral Savings and Loan Associations from advertising that they receive "savings" on the ground that the authority to receive savings is reserved to "banks." By way of contrast, however, New York, in its legislation, attempts to prevent "banks" other than "savings banks or a savings and loan association" from advertising that they receive "savings." New York Banking Law, § 258–1 (McKinney's Laws of New York, Vol. 4, Part 1, § 258–1).[9]

These deficiencies and conflicts in local laws could be overcome only in a Federal system based on the best practices in all the States and administered by a central body under uniform regulation and supervision. The Home Owners' Loan Act as "Federal legislation, administered by a national agency, intended to solve a national problem on a national scale" (*National Labor Relations Board* v. *Hearst Publications,* 322 U. S. 111, 123) was the solution of Congress. To subject the Congressional solution of the problem to the superimposition of State regulation devised, intended and adapted for a particular form of State institution is obviously incompatible with the maintenance of a uniform Federal system, and would introduce variations as wide as the differences made by the forty-eight States in applying their theories and practices.

Even if the terms of the particular State statute did not conflict with the terms of the Home Owners' Loan Act or the regulations issued by the Home Loan

[9] The New York statute has recently been declared invalid as applied to national banks. *People* v. *Franklin Nat. Bank of Franklin Square*, 105 N. Y. S. 2d 81 (Sup. Ct.).

Bank Board, the application of a diversity of State law would make national supervision a practical impossibility. Even the imposition of penalties by the State for violation of Federal regulations would seriously hamper the uniformity of operations of the Federal system. Uniformity cannot be achieved if more than one authority has the power to determine whether there has been a violation. Nor can uniformity be obtained in the case of an admitted violation if penalties are imposed by more than one authority. Cf. *Farmers' & Mechanics' Natl. Bank* v. *Dearing,* 91 U. S. 29.[10]

[10] The question in the *Dearing* case was whether the sanctions of a State usury law were applicable to a national bank. Section 30 of the National Bank Act, 13 Stat. 99, 108, provided that the rate of interest chargeable by each bank was to be that allowed by the law of the State where the bank was situated, and that where no rate of interest was fixed by local law, the national bank might charge interest at a rate not exceeding 7% per annum. It further provided that "knowingly taking, receiving, reserving, or charging a rate of interest greater than aforesaid shall be held and adjudged a forfeiture of the entire interest * * *." A note discounted by the Farmers' Natl. Bank at the rate of interest of 10% per annum was held by the New York Court of Appeals to be illegal and to void the note, as well as the interest, under New York law. The Supreme Court reversed, stating that "The point to be sought is the intent of the law-making power. The offense of usury under this section is as great where the local law does not, as where it does, define the rate of interest. The same considerations apply in both cases. Why should Congress punish in one class of cases, and, so far as its action is concerned, exempt in the other? Why such discrimination? The result would be, that in Pennsylvania, where the contract would be void only as to the unlawful excess, the bank would lose nothing but such excess; while in New York, under a contract precisely the same, except as to the identity of the lender, the entire debt would be lost to the bank. This would be contrary to the plainest principles of reason and justice." 91 U. S. at 33.

In light of the language of the Home Owners' Loan Act and its setting, we think it clear that Congress has expressed its intention to occupy the field and to define an area of legislation demanding a uniform national rule. It has thereby excluded State regulation because the attempted application of such regulation would destroy that uniformity. As we have previously noted, *supra,* pp. 9–10, it is immaterial whether the particular State regulation would be coincidental with, supplemental to, or in opposition to the Federal enactment. "The national purpose to establish uniformity necessarily excludes State regulation." *International Shoe Co.* v. *Pinkus,* 278 U. S. 261, 265; cf. *Napier* v. *Atlantic Coast Line R. R. Co.,* 272 U. S. 605; see *Southern Pacific Co.* v. *Arizona,* 325 U. S. 761, 767–768.

The observations of the Supreme Court in *Bethlehem Steel Co.* v. *New York State Labor Relations Board,* 330 U. S. 767, are particularly pertinent to this case. The Court there pointed out that (*id* at 773–774):

> When Congress has outlined its policy in rather general and inclusive terms and delegated determination of their specific application to an administrative tribunal, the mere fact of delegation of power to deal with the general matter, without agency action, might preclude any State action if it is clear that Congress has intended no regulation except its own. [Citation] In other cases, Congress has passed statutes which initiate regulation of certain activities, but where effective regulation must wait upon the issuance of rules by an

> administrative body. In the interval before those rules are established, this Court has usually held that the police power of the State may be exercised. [Citations] But when Federal administration has made comprehensive regulations effectively governing the subject matter of the statute, the Court has said that a State regulation in the field of the statute is invalid even though that particular phase of the subject has not been taken up by the Federal agency.

Not only does the Act embrace the entire field, the comprehensive rules and regulations adopted by the Home Loan Bank Board clearly meet the test of covering the subject matter of the statute. We submit, therefore, that Congress has preempted the field, and that the State statutes appellants rely upon cannot be applied to appellee.[11]

C. Since the Home Owners' Loan Act and the regulations promulgated thereunder by the Home Loan Bank Board authorize Federal Savings and Loan Associations to solicit "savings accounts," the sanctions of the California Banking Code are inapplicable here

As we have just shown, the State law here sought to be invoked is invalid because it conflicts with national policy. Accordingly, even if the terms of

[11] Nothing in the decisions cited by appellants concerning the powers of the States with respect to national banks affects this conclusion. For the National Bank Act (12 U. S. C. 21–213) neither delegated to a Federal agency nor exercised the all-inclusive authority which the Home Owners' Loan Act grants to the Board. As the District Court stated, "As to national banks, Congress expressly left open a field for State regulation and the application of State laws: but as to Federal savings and loan associations, Congress made preemptive delegation to the Board to organize, incorporate, supervise and regulate, leaving no field for State supervision." (R. 117–118).

the State law did not conflict with the terms of the Federal enactment, it could not be applied to the appellee. In fact, however, there is a conflict in terms.

The gravaman of the complaint is that the appellee does not have a certificate from the State Superintendent of Banking authorizing it to engage in a "banking business" but uses the words "bank" and "savings" in its advertising so as to create the impression that it is engaged in the "banking business." Specifically, appellants charge that appellee solicits "savings accounts" in its advertising and uses a shortened form of its full corporate name—"Coast Federal Savings" instead of "Coast Federal Savings and Loan Association." (R. 143–144.[12]) This form of advertising, we submit, was implicitly authorized by Congress, and is expressly authorized by the Home Loan Bank Board.

To begin with, it must be borne in mind that Federal Savings and Loan Associations are savings institutions. The Act explicitly recognizes this basic fact by providing in Section 5 (a) that they are "to be known as 'Federal Savings and Loan Associa-

[12] Appellants also complain that appellee had so arranged the signs in its window as to emphasize the word "Bank" in the phrase "Member Federal Home Loan Bank" and to make it appear from a distance that the signs read "Coast Federal Savings Bank." The signs were changed at the direction of the Home Loan Bank Board some seven months before this action was instituted, and, thereafter, the signs did not emphasize the work "Bank." (R. 100.) There is no question but that the appellee is authorized to use the word "Bank" in a proper fashion to advertise that it is a member of the Federal Home Loan Bank System. See 24 CFR 1949 ed. 123.25.

tions.' " In thus directing that their corporate name include the word "savings," Congress made known the nature of the institutions it was authorizing the Board to charter. It emphasized this fact in Section 6 of the Act, which is entitled "Encouragement of Saving and Home Financing." During the Congressional debates on Section 5 of the Act, the associations were referred to as places in which people could "save their funds." 77 Cong. Rec. 4974. And in the debates on Title IV of the National Housing Act (12 U. S. C. 1724), which is applicable to every Federal Savings and Loan Association (12 U. S. C. 1726 (a)), repeated references were made to insurance of "savings." 78 Cong. Rec. 11192, 11196. It is also pertinent to note that both H. R. 9620 and S. 3603, the bills from which Title IV of the National Housing Act is derived, included in their preambles the stated purpose "to promote thrift and protect savings."

In the light of this background, it can scarcely be said that Congress intended that Federal Savings and Loan Associations should not be savings institutions or should not accept savings. And it would certainly be anomalous to suggest that an account in a savings institution cannot be called a "savings account." The fact that the savings of members of Federal Savings and Loan Associations are accumulated through payments on shares rather than through deposits plainly does not affect their essential character as savings.

In recognition of this basic fact, the rules and regulations promulgated by the Home Loan Bank Board specifically authorize the Associations to receive

"savings." Section 141.4 defines the monetary interest of members of the association as "savings accounts," and Section 145.1 authorizes the associations to raise their capital through payments on "savings accounts." (24 CFR 1950 Supp. 141.4, 145.1; see also to the same effect, 24 CFR 1950 Supp. 144.1, 145.2, 145.3, 145.4, 161.4, 163.1).

Accordingly, insofar as the California statute attempts to prohibit the use of the word "savings" by Federal Savings and Loan Associations, it conflicts directly with the announced intention of Congress to create savings institutions and with the regulations issued by the Board pursuant to that policy directive. If a Federal Savings and Loan Association is authorized to receive "savings accounts," it follows that it is authorized and has the right to advertise that fact. Plainly, the right to advertise its functions and services is necessarily incidental to the right to perform those functions and services. Cf. *People* v. *Franklin Nat. Bank of Franklin Square,* 105 N. Y. S. 2d 81; see 6 Fletcher, *Cyclopedia Corporation Law* (1950 ed.) § 2508.

Indeed such advertising has, in fact, been authorized. In 1938, prior to the actions of appellee which are here complained of, the Federal Savings and Loan Insurance Corporation, a Federal instrumentality which insures accounts of associations (12 U. S. C. 1724–1732) published a handbook dealing with approved and recommended advertising by insured institutions. The handbook entitled "Suggestions for Federal Savings and Loan Association in giving information to the public," approved the use of such

phrases as "Accounts Federally Insured," "Insured Savings Accounts," "Save Where Savings Are Insured" and "Availability of Funds." (R. 109.)[13] In this connection, the record also reveals that the Board has recognized the propriety of the use, as a matter of convenience, of the abbreviated corporate title "Coast Federal Savings" instead of "Coast Federal Savings and Loan Association" (R. 175).

In fine, the purpose of Congress in providing for the creation of Federal Savings and Loan Associations was to furnish to the public facilities for saving money. The attainment of that objective would seriously be interfered with if these associations were prohibited from informing the public of that objective and of the facilities available. We believe it can be categorically said that, if Federal Savings and Loan Associations had, from the beginning, been prevented from advertising that they receive "savings," the United States Treasury would still be the principal shareholder in these associations.[14] We submit, therefore, that the California statute, as the appellants here attempt to apply it, is invalid because it

[13] The regulations issued by the Board with respect to insured institutions (24 CFR, Ch. 1, Sub. Ch. D) automatically apply to Federal Savings and Loan Associations because of the statutory requirement that all Federal associations be insured. (12 U. S. C. 1726 (a).)

[14] To provide for the financing of the associations, the Act authorized, and imposed a duty upon, the Secretary of the Treasury to subscribe for preferred shares up to the sum of $100,000 in each association and to subscribe for any amount of fully paid income shares, provided that the total amount of preferred shares and fully paid income shares did not exceed 75 per cent of the total investment in the shares of each association. (Section 5 (g) and (j), 12 U. S. C. 1464 (g) and (j)).

conflicts with the policy of Congress and with the regulations promulgated by the Home Loan Bank Board to carry out that policy. Cf. *Missouri ex rel. Burnes Natl. Bank* v. *Duncan,* 265 U. S. 17; *Easton* v. *Iowa,* 188 U. S. 220. To uphold the statute would be to defeat the purpose for which Congress intended the chartering of appellee and other Federal Savings and Loan Associations. "That defeat could be entire were defendant obligated to suspend for lack of enough savings [accounts] with which to operate its business." *People* v. *Franklin Natl. Bank of Franklin Square,* 105 N. Y. S. 2d 81, 97.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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